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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF KING

9 LUMMI INDIAN NATION, MAKAH )  
10 INDIAN TRIBE, QUILEUTE INDIAN )  
11 TRIBE, QUINULT INDIAN NATION, )  
12 SQUAXIN ISLAND INDIAN TRIBE, )  
13 SUQUAMISH INDIAN TRIBE, and the )  
14 TULALIP TRIBES, federally recognized )  
15 Indian tribes, )

16 Plaintiffs, )

17 v. )

18 STATE OF WASHINGTON; CHRISTINE )  
19 GREGOIRE, Governor of the State of )  
20 Washington; WASHINGTON )  
21 DEPARTMENT OF ECOLOGY; JAY )  
22 MANNING, Director of the Washington )  
23 Department of Ecology; WASHINGTON )  
24 DEPARTMENT OF HEALTH; and MARY )  
25 SELECKY, Secretary of Health for the State )  
of Washington, )

Defendants. )

JOAN BURLINGAME, an individual; LEE )  
BERNHEISEL, an individual; SCOTT )  
CORNELIUS, an individual; PETER )  
KNUTSON, an individual; PUGET SOUND )

NO. 06-2-40103-4 SEA

**STATE DEFENDANTS' FIRST SET OF  
ANSWERS AND RESPONSES TO  
PLAINTIFFS' FIRST INTERROGATORIES  
AND REQUESTS FOR PRODUCTION**

NO. 06-2-28667-7 SEA

**STATE DEFENDANTS' FIRST SET OF  
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ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
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1 HARVESTERS; WASHINGTON )  
ENVIRONMENTAL COUNCIL; SIERRA )  
2 CLUB; and THE CENTER FOR )  
ENVIRONMENTAL LAW AND POLICY, )

3 Plaintiffs, )

4 vs. )

5 STATE OF WASHINGTON, )  
WASHINGTON STATE DEPARTMENT OF )  
6 ECOLOGY, and WASHINGTON STATE )  
DEPARTMENT OF HEALTH, )

7 Defendants, )

8 and )

9 WASHINGTON WATER UTILITIES )  
COUNCIL, CASCADE WATER ALLIANCE )  
10 and WASHINGTON STATE UNIVERSITY, )

11 Defendant-Intervenors. )  
12

13 TO: JOAN BURLINGAME, an individual, LEE BERNHEISEL, an individual, SCOTT  
14 CORNELIUS, an individual, PETER KNUTSON, an individual, PUGET SOUND  
HARVESTERS, WASHINGTON ENVIRONMENTAL COUNCIL, SIERRA CLUB, THE  
15 CENTER FOR ENVIRONMENTAL LAW AND POLICY, LUMMI INDIAN NATION,  
MAKAH INDIAN TRIBE, QUINULT INDIAN NATION, SQUAXIN ISLAND INDIAN  
TRIBE, SUQUAMISH INDIAN TRIBE, and the TULALIP TRIBES, Plaintiffs

16 AND TO: PATTI GOLDMAN, SHAUN GOHO, HARRY L. JOHNSEN, JOHN B. ARUM,  
17 BRIAN C. GRUBER, KAREN ALLSTON, JOSEPH CALDWELL, KEVIN LYON, MELODY  
ALLEN, MASON MORISSET, KIMBERLY ORDON, and MICHAEL E. TAYLOR, their  
18 attorneys of record herein.

19 **GENERAL OBJECTIONS**

20 1. Defendants State of Washington, Governor Christine Gregoire, Department of  
21 Ecology ("Ecology"), Jay Manning, Department of Health ("Health"), and Mary Selecky  
22 (hereinafter referred to as "the State" or "Defendants") object to all instructions and definitions

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1 to the extent they enlarge upon, supersede, or modify the rules of discovery set forth in CR 26,  
2 CR 33, or CR 34, including, without limitation, the obligation to supplement answers and  
3 responses.

4 2. The State objects to all definitions, including but not limited to the definitions of  
5 "Ecology", "Health", and the "State," to the extent that they include attorneys and investigators,  
6 on the grounds that such definitions are overbroad and improperly seek information protected  
7 from disclosure by the attorney-client privilege and attorney work product privilege.

8 3. To the extent that any discovery request may be construed as calling for  
9 documents or information subject to a claim of privilege, including, without limitations, the  
10 attorney/client or attorney/work product privilege, the State hereby claims such privilege and  
11 objects to such discovery request on that basis.

12 4. To the extent that any discovery request may be construed as calling for  
13 information not in the possession of the State, the State objects to such discovery request on the  
14 basis that it is unduly burdensome and oppressive.

15 5. To the extent that any discovery request calls for any document or information  
16 generally available to the Plaintiffs from a public source or which is already in the possession of  
17 the Plaintiffs, or equally available to the Plaintiffs from third parties, the State objects on the  
18 ground that such discovery request is unduly burdensome and oppressive.

19 6. The State objects to all discovery requests to the extent that they call for  
20 information that is not reasonably calculated to lead to discovery of admissible evidence, are  
21 overly broad and/or unlimited in geographic scope or time period, or are unduly burdensome.

22 7. In responding to any discovery request, the State has made reasonable efforts to  
23 respond, to the extent that no objection has been lodged against such discovery request, as the

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1 State understands and interprets each discovery request. If the Plaintiffs subsequently assert an  
2 interpretation of any discovery request which differs from that of the State, the State reserves the  
3 right to supplement any objection, and/or amend any response.

4 8. The answers and responses set forth below represent the State's present  
5 knowledge, based on discovery, investigation and trial preparation to date. Discovery,  
6 investigation and trial preparation are continuing. The State expressly reserves the right to rely  
7 at trial upon any further information adduced upon completion of discovery, investigation and  
8 trial preparation. Discovery in this matter is just beginning and the State reserves the right to  
9 change or supplement these responses as new information is discovered.

10 9. These General Objections are incorporated into each of the answers and responses  
11 set forth below, which answers and responses are made without waiver of any of these General  
12 Objections.

13 INTERROGATORY NO. 1: Identify all water right certificates issued by Ecology prior to  
14 September 9, 2003, for Municipal Water Supply Purposes on the basis of the Pumps and Pipes  
15 Policy, where either the Qa or Qi authorized in the certificate is greater than the Qa or Qi alleged  
16 to have been put to actual beneficial use in the proof of appropriation (or other similar document)  
17 filed in support of issuance of the certificate.

18 ANSWER:

19 Defendants object to Interrogatory No. 1 as overly broad and unduly burdensome.  
20 Defendants object to Interrogatory No. 1 as vague because the term "Municipal Water Supply  
21 Purposes" was not defined prior to September 9, 2003, and because Defendants may have a  
22 differing interpretation of what constitutes water right certificates issued on the basis of a  
23 "pumps and pipes policy" notwithstanding Plaintiffs' definition of this term. Defendants also  
24 object to Interrogatory No. 1 as not reasonably calculated to lead to the discovery of admissible  
25 evidence and therefore outside the scope of permissible discovery prescribed by Civil Rule 26  
and 33 because Plaintiffs have repeatedly asserted that their constitutional challenge to the  
Municipal Water Law is a facial one. Controlling case law indicates that no facts are necessary

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for a facial challenge and Defendants should therefore not be required to identify or produce any documents. Without waiving the foregoing objections, Defendants answer as follows:

Plaintiffs have limited the geographic scope of Interrogatory Nos. 1, 3, 4, and 5 to Water Resource Inventory Areas (WRIA) 7, 8 (for Townships/Ranges: 22N/R05-E-R08E and 21N/R06-R08E only), 9 (for Townships/Ranges: 22N/R05-E-R08E and 21N/R06-R08E only), 15, 34 (for groundwater rights only), and 48. In these specific WRIsAs, Defendants have identified 65 approved or proposed water system plans or small water system management programs that may have water right certificates issued on the basis of a "pumps and pipes policy," as defined by Plaintiffs. Relevant portions of these water system plans and small water system management programs have been produced in response to Requests for Production Nos. 4, 5, and 6, and each includes a water rights section identifying the water rights associated with each water system plan or small water system management program. Further, in response to Request for Production No. 1, Defendants have produced Department of Ecology Water Resource Tracking System (WRTS) spreadsheets identifying every water right certificate associated with each identified WRIA. Plaintiffs are invited to review the produced materials and identify those specific water right documents listed in each water system plan or small water system management program, or WRTS spreadsheet, they would like produced. Once Plaintiffs identify which water right documents they would like produced, Defendants will arrange to produce those documents for Plaintiffs, which will serve to complete Defendants' response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 1: For each water right certificate identified in response to Interrogatory No. 1, please produce a copy of: (a) the water right certificate; (b) the water right application; (c) the water right permit and report of examination; (d) the proof of appropriation; and (e) any other documents relating to either the capacity of the applicant's water distribution system or its actual beneficial use of water prior to issuance of the certificate.

RESPONSE:

Defendants object to Request for Production No. 1 as overly broad and unduly burdensome. Defendants object to Request for Production No. 1 as vague because the term "Municipal Water Supply Purposes" was not defined prior to September 9, 2003, and because Defendants may have a differing interpretation of what constitutes water right certificates issued on the basis of a "pumps and pipes policy" notwithstanding Plaintiffs' definition of this term. Defendants also object to Request for Production No. 1 as not reasonably calculated to lead to the discovery of admissible evidence and therefore outside the scope of permissible discovery prescribed by Civil Rule 26 and 33 because Plaintiffs have repeatedly asserted that their constitutional challenge to the Municipal Water Law is a facial one. Controlling case law indicates that no facts are necessary for a facial challenge and Defendants should therefore not be

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1 required to identify or produce any documents. Without waiving the foregoing objections,  
2 Defendants answer as follows:

3 See answer to Interrogatory No. 1 above and the attached spreadsheets derived from  
4 WRTS. Defendants will produce additional documents responsive to Request for Production  
5 No. 1 after Plaintiffs identify which water right documents they would like produced after  
6 reviewing the attached WRTS spreadsheets and the relevant portions of the water system  
7 planning documents produced in response to Requests for Production Nos. 4, 5, and 6.

8 REQUEST FOR PRODUCTION NO. 2: Please produce any documents containing individual  
9 or aggregate estimates of the difference between system capacity and actual beneficial use,  
10 measured in either Qa or Qi, for water right certificates issued by Ecology for Municipal Water  
11 Supply Purposes on the basis of the Pumps and Pipes Policy prior to September 9, 2003.

12 RESPONSE:

13 Response will be provided in a future set of Defendants' responses to requests for  
14 production.

15 INTERROGATORY NO. 2: Identify all water right documents and related records for water  
16 rights which have been amended by Ecology pursuant to RCW 90.03.560 to include the words  
17 "municipal water supply purposes."

18 ANSWER:

19 Defendants object to Interrogatory No. 2 as not reasonably calculated to lead to the  
20 discovery of admissible evidence and therefore outside the scope of permissible discovery  
21 prescribed by Civil Rules 26 and 33 because Plaintiffs have repeatedly asserted their challenge to  
22 the Municipal Water Law is a facial one. Controlling case law indicates that no facts are  
23 necessary for a facial challenge and Defendants should therefore not be required to identify or  
24 produce any documents. Without waiving the foregoing objections, Defendants answer as  
25 follows:

The following water rights, associated with Ecology regional offices, have been amended  
by Ecology pursuant to RCW 90.03.560 to include the words "municipal water supply purposes."

Eastern Regional Office

Asotin PUD, G3-24918C.

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1 Raymond Mattox, G3-28368P.

Raymond Mattox, G3-28606P.

2 Port of Walla Walla, No. 4475.

3 Port of Walla Walla, G3-29640P.

4 Central Regional Office

5 Auvil Fruit Company, Inc., G4-29616C.

6 Columbia Gorge Airport, No. 02105A.

7 Dallesport Water Association Inc, Nos. G4-23324C & G4-25466C.

8 Isenhart Irrigation District, No.1086.

9 Southwest Regional Office

10 Iliad, Inc., G2-27441.

11 PUD No. 1 of Skamania County, G2-26488.

12 Northwest Regional Office

13 Ames Lake Water Association, G1-25831C.

14 City of Everett, G1-02579-A.

15 City of Everett, G1-02811A.

16 Public Utility District No. 1 of Kitsap County, various water right documents and records.

17 Sammamish Plateau Water and Sewer District, various water right documents and records.

19 REQUEST FOR PRODUCTION NO. 3: For each amended water right document and related  
20 records identified in response to Interrogatory No. 2, please produce a copy of: (a) the original  
21 water right document and related records; (b) the amended water right document and related  
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1 records; and (c) any other documents relating to the water right holder's original purpose of use,  
2 place of use, system capacity, and actual beneficial use of water.

2 RESPONSE:

3 Response will be provided in a future set of Defendants' responses to requests for  
4 production.

5 INTERROGATORY NO. 3: Identify all approved or proposed water system plans for a  
6 Municipal Water Supplier where the approved or proposed service area modifies the place of use  
7 from that set forth in the Municipal Water Supplier's water rights certificates and permits.

8 ANSWER:

9 Defendants object to Interrogatory No. 3 as overly broad and unduly burdensome.  
10 Defendants also object to Interrogatory No. 3 as not reasonably calculated to lead to the  
11 discovery of admissible evidence and therefore outside the scope of permissible discovery  
12 prescribed by Civil Rules 26 and 33 because Plaintiffs have repeatedly asserted that their  
13 constitutional challenge to the Municipal Water Law is a facial one. Controlling case law  
14 indicates that no facts are necessary for a facial challenge and Defendants should therefore not be  
15 required to identify or produce any documents. Defendants further object because Interrogatory  
16 No. 3 presumes and impliedly requires a legal interpretation and conclusion, which is outside the  
17 scope of discovery under Civil Rules 26 and 33. As a matter of law, Defendants dispute  
18 Plaintiffs' implied legal interpretation and conclusion. Without waiving the foregoing  
19 objections, Defendants answer as follows:

20 See answer to Interrogatory No. 1 above wherein Defendants identify the geographic  
21 areas for which water system plans and small water system management programs are being  
22 identified and produced using a two-phased approach as arranged with Plaintiffs. Plaintiffs will  
23 first be provided with the agreed relevant parts of approved and proposed water system plans and  
24 small water system management programs in the identified geographic areas. In addition to the  
25 water system plan documents, Defendants will include each system's water facilities inventory,  
which includes service connection information. Plaintiffs will then have the opportunity to  
request documents associated with water rights certificates that they select through their review  
of the water system plans and small water system management programs provided in this first set  
of answers and responses.

REQUEST FOR PRODUCTION NO. 4: For each approved or proposed water system plan  
identified in response to Interrogatory No. 3, please produce a copy of (a) the approved or

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1 proposed water system plan; (b) all water right certificates and permits held by each Municipal  
2 Water Supplier; (c) any applications relating to these water right certificates and permits; and (d)  
3 any other documents relating to the number of service connections intended to be served by the  
4 original water right applicant.

4 RESPONSE:

5 See the answer to Interrogatory No. 3 above and the attached documents.

6 INTERROGATORY NO. 4: Identify all approved or proposed water system plans for a  
7 Municipal Water Supplier where the number of service connections allowed to be served in the  
8 approved or proposed water system plan is greater than the service connection figure in the  
9 Municipal Water Supplier's water right application or any subsequent water right document.

10 ANSWER:

11 See the answer to Interrogatory No. 3 and the response to Request for Production No. 4  
12 above.

13 REQUEST FOR PRODUCTION NO. 5: For each approved or proposed water system plan  
14 identified in response to Interrogatory No. 4, please produce a copy of (a) the approved or  
15 proposed water system plan; (b) all water right certificates and permits held by each Municipal  
16 Water Supplier; (c) any applications relating to these water right certificates and permits; and (d)  
17 any other documents relating to the number of service connections intended to be served by the  
18 original water right applicant.

18 RESPONSE:

19 See the answer to Interrogatory No. 3 and the response to Request for Production No. 4  
20 above.

21 INTERROGATORY NO. 5: Identify all approved or proposed water system plans for a  
22 Municipal Water Supplier where the population allowed to be served in the approved or

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1 proposed water system plan is greater than population figures in the Municipal Water Supplier's  
2 water rights application or any subsequent water right document.

3 ANSWER:

4 See the answer to Interrogatory No. 3 and the response to Request for Production No. 4  
5 above.

6 REQUEST FOR PRODUCTION NO. 6: For each currently effective or proposed water system  
7 plan identified in response to Interrogatory No. 5, please produce a copy of the (a) the proposed  
8 or approved water system plan; (b) all water right certificates and permits held by the Municipal  
9 Water Supplier; (c) any applications relating to these water right certificates and permits; and (d)  
10 any other documents relating to the population intended to be served by the original water right  
11 applicant.

12 RESPONSE:

13 See the answer to Interrogatory No. 3 and the response to Request for Production No. 4  
14 above.

15 INTERROGATORY NO. 6: Identify by date, applicant, and application number all instances in  
16 which Ecology or its attorneys has informed (either orally or in writing) an applicant for a water  
17 right change or transfer that Ecology's approval of the requested change was unnecessary due to  
18 the legal effects of RCW 90.03.386(2) or RCW 90.03.260(4) or (5).

19 ANSWER:

20 Defendants object to Interrogatory No. 6 as overly broad and unduly burdensome.  
21 Defendants refer Plaintiffs to Defendants' response to Plaintiffs' Request for Admission No. 1  
22 wherein Defendants admit that "Ecology has informed some applicants for water right changes  
23 or transfers that Ecology's approval of the requested change was unnecessary due to the legal  
24 effects of RCW 90.03.386(2)." Defendants also object to Interrogatory No. 6 as not reasonably  
25 calculated to lead to the discovery of admissible evidence and therefore outside the scope of  
permissible discovery prescribed by Civil Rule 26 and 33 because Plaintiffs have repeatedly  
asserted their challenge to the Municipal Water Law is a facial one. Controlling case law  
indicates that no facts are necessary for a facial challenge and Defendants should therefore not be

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1 required to identify or produce any documents. Without waiving the foregoing objections,  
2 Defendants answer as follows:

3 Ecology has informed no applicant for a change or transfer of a water right that the  
4 requested change was unnecessary due to the legal effects of RCW 90.03.260(4) or (5).

5 Because Ecology has admitted that it has informed some applicants for water right  
6 changes or transfers that their requested change or transfer was unnecessary due to the legal  
7 effects of RCW 90.03.386(2), and because this interrogatory is unduly burdensome, Ecology  
8 identifies the following representative samples where it has informed some applicants for water  
9 right changes or transfers that their requested change or transfer was unnecessary due to the legal  
10 effects of RCW 90.03.386(2). If Plaintiffs need further representative samples responsive to this  
11 interrogatory, Plaintiffs' counsel are encouraged to contact Defendants' counsel.

- 12 1. Annapolis Water District, CG1-23034C and CG1-03497C.
- 13 2. Arcadia Community Water Association, GWC-3962A.
- 14 3. Colony Mountain Community Club, G1-20650C.
- 15 4. Decatur Shores Water District; CG1-22566C.
- 16 5. Deer Creek Water Association; G1-21084C.
- 17 6. Emerald Water System, CG1-22966C, CG1-25281C.
- 18 7. Fircroft Water Works, CG1-22793.
- 19 8. Kitsap Public Utility District, various water rights and documents.
- 20 9. Lake Avylon Water Company; G1-22762.
- 21 10. MacKaye Harbor Water Company, CG1-23275C.
- 22 11. Mariani Water System; G1-23088C.
- 23 12. Mt. Baker Water Association; 2835, 20269C.
- 24 13. Washington Water Service, G2-25845P, G2-26326.
- 25 14. Vista Water System, G2-27116, G2-27117.
15. Old Settlers Water Association, G1-25856C.
16. Skagit County Water District No. 1, G1-24847C.

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17. South Whidbey School District, CG1-23620C.

18. Richard and Gene Wiley, G2-28523.

19. Lakewood Water Districy, various water rights and documents.

20. Iliad, Inc., G2-27441.

REQUEST FOR PRODUCTION NO. 7: For each instance identified in response to Interrogatory No. 6, please produce: (a) a copy of the water right permit or certificate that the applicant was seeking to change or transfer; (b) a copy of the application for change or transfer; (c) any protests to or comments upon the proposed change or transfer; and (d) all correspondence between Ecology and the applicant relating to the proposed change or transfer.

RESPONSE:

Response will be provided in a future set of Defendants' responses to requests for production.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents identifying, evaluating, describing, predicting, forecasting, or estimating the effects of HB 1338, or any provision thereof, on (a) consumptive water use; (b) stream flows, (c) fish habitat or production, (d) Indian treaty rights, or (e) existing water rights.

RESPONSE:

Response will be provided in a future set of Defendants' responses to requests for production.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents you prepared prior to September 9, 2003, (a) defining or discussing the terms "municipal water supply purposes" or

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1 "municipal water supplier"; or (b) defining or discussing the terms "municipal" or  
2 "municipality" in the context of State water resources law.

3 RESPONSE:

4 Response will be provided in a future set of Defendants' responses to requests for  
5 production.

6 REQUEST FOR PRODUCTION NO. 10: Please produce any documents created between July  
7 2, 1998, and September 9, 2003, containing analyses of the validity and/or quantification of  
8 water rights issued by Ecology for Municipal Water Supply Purposes on the basis of the Pumps  
9 and Pipes Policy.

10 RESPONSE:

11 Response will be provided in a future set of Defendants' responses to requests for  
12 production.

13 INTERROGATORY NO. 7: Please describe how Ecology, including its attorneys, defined, used  
14 or applied the term "municipal water supply purposes," prior to September 9, 2003, with respect  
15 to (a) RCW 90.14.140(2)(d), and (b) other provisions of Washington water law.

16 ANSWER:

17 Defendants object to Interrogatory No. 7 because the request is a purely legal question,  
18 and therefore not within the appropriate scope of discovery as prescribed by Civil Rules 26  
19 and 33. Furthermore, this interrogatory calls for the legal analysis of Defendants' counsel, and  
20 therefore requests information that is protected as attorney work product. Without waiving the  
21 foregoing objections, Defendants answer as follows:

22 Prior to September 9, 2003, the effective date of the Municipal Water Law of 2003, there  
23 was no definition of the term "municipal water supply purposes" contained in Washington water  
24 law. As a result, Ecology personnel construed the term "municipal water supply purposes" in the  
25 context of RCW 90.14.140(2)(d) and other provisions of Washington water law differently at  
different points in time. Thus, while there were instances prior to September 9, 2003, where  
Ecology personnel construed the term "municipal water supply purposes" to not include group

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1 domestic uses served by a non-governmental entity, there were other instances when Ecology  
2 construed the term to include group domestic uses served by a non-governmental entity. No  
3 Ecology rules, policy statements, or interpretive statements have ever provided any definition of  
4 the term "municipal water supply purposes."

5 In several instances prior to September 9, 2003, Ecology issued water right certificates to  
6 non-governmental entities that designated the purpose of use for the rights as being for municipal  
7 supply purposes. These entities include, but are not necessarily limited to:

- 8 1. Maple Cooperative Water Company, No. 651-D.
- 9 2. Burlington Northern, Inc., G3-21088C.
- 10 3. Sherman Combs, No. 1501.
- 11 4. W.C. Reeder, No. 20-A.
- 12 5. Spring Hill Water Works, Inc., No. 152-A.
- 13 6. Sidney H. Ducken and Karl J. Ducken, No. 4438-A.
- 14 7. Tatoosh Company, No. G1-00114C.

15 In an administrative case before the Pollution Control Hearings Board (PCHB), and in  
16 Whatcom County Superior Court on judicial review, Ecology took the position that a privately-  
17 held water association did not qualify for the exemption from relinquishment under  
18 RCW 90.14.140(2)(d). See *Georgia Manor Water Association v. Ecology*, PCHB No. 93-68  
19 (Order Granting Partial Summary Judgment, 1994); *Georgia Manor Water Association v. State*,  
20 Whatcom County Superior Court No. 94-2-02045-1, Order Denying in Part and Granting  
21 Georgia Manor's Petition for Review, May 22, 1995. In a proceeding in the Yakima River Basin  
22 water rights adjudication, *Department Ecology v. Acquavella*, Ecology took the position that the  
23 Naches Cowiche Canal Company did not qualify for the municipal exemption to relinquishment.  
24 See *Department Ecology v. Acquavella*, Yakima County Superior Court No. 77-2-01484-5,  
25 Report of the Court Concerning the Water Rights for the Naches Cowiche Canal Company,  
Volume 22, October 10, 1994.

26 An Ecology Draft Municipal Water Right Issue Paper, dated July 13, 1994, suggested  
27 that "municipal purposes" should be defined through the following criteria: "public entity  
28 obliged to accept all customers; serve multiple purposes (domestic, commercial, industry,  
29 public); system with long-term growth expectation with population to be served (not just serving  
30 a plat); county mandate to serve (under CWSP); and serve incorporated area or within GMA  
31 growth boundary." However, this draft paper never became final, and the definition was never  
32 adopted as official policy by Ecology. Subsequently, Ecology prepared a January 1995 version

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1 of this paper which omitted the proposed criteria to determine whether a water right is for  
municipal supply purposes.

2 Moreover, other Ecology personnel advanced the position that non-governmental entities  
could hold water rights for municipal supply purposes. One Ecology employee suggested that a  
3 definition should be adopted as follows: "Type of use – Municipal use generally includes  
domestic supply, industrial supply, irrigation of lawns, parks, cemeteries, and commercial uses."  
4 Further, WAC 173-590, adopted by Ecology in 1976, which authorizes reservations of water in  
particular basins to serve regional water supply needs, defines "community water use" as "use  
5 of water associated with needs of a community including street cleaning, parks, public buildings,  
public swimming pools, fire fighting, and attendant commercial, industrial and irrigational uses,"  
6 and "public water supply" as "any water supply intended or used for human consumption and  
community uses for more than one single-family residence." WAC 173-590-050. These terms  
7 for water use purposes, which are akin to "municipal supply purposes," are not limited to  
governmental entities.

8 REQUEST FOR PRODUCTION NO. 11: Please produce any documents created by Ecology,  
9 including its attorneys, before September 9, 2003, which define, use or apply the term  
10 "municipal water supply purposes" in the context of decisions or policies relating to (a)  
11 relinquishment of water rights; (b) perfection of water rights; or (c) other issues of water  
12 resource management.

13 RESPONSE:

14 Response will be provided in a future set of Defendants' responses to requests for  
15 production.

16 INTERROGATORY NO. 8: Do you contend that RCW 90.14.140(2)(d) applies to excuse  
17 nonuse of a water right held by non-governmental entity for Municipal Water Supply Purposes  
18 where such nonuse occurred prior to September 9, 2003?

19 ANSWER:

20 Defendants object to Interrogatory No. 8 as vague and ambiguous because it does not  
define the term "non-governmental entity." Defendant's further object to Interrogatory No. 8  
21 because whether RCW 90.14.140(2)(d) applies to excuse nonuse of a water right held by non-  
governmental entities for Municipal Water Supply Purposes where such nonuse occurred prior to  
22 September 9, 2003, is a purely legal question, and therefore not within the appropriate scope of

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discovery as prescribed by Civil Rules 26 and 33. Furthermore, this interrogatory calls for the legal analysis of Defendants' counsel, and therefore requests information that is protected as attorney work product. Without waiving the foregoing objections, Defendants answer as follows:

RCW 90.14.140(2)(d) will not necessarily apply to excuse nonuse of a water right held by a non-governmental entity for Municipal Water Supply Purposes where such nonuse occurred prior to September 9, 2003. Ecology's position on this matter is outlined in Policy 2030, the Municipal Water Law Interpretive and Policy Statement, which became effective February 5, 2007:

Ecology interprets the statute as requiring active compliance with the beneficial use definitions in RCW 90.03.015(4).

If a water right holder's actual use of water does not meet the definition of a water right for municipal water supply purposes (e.g. by serving less than the residential connection or nonresident population thresholds under RCW 90.03.015), then the water right no longer qualifies as a right for municipal water supply purposes. The exception to relinquishment for municipal water supply purposes under RCW 90.14.140(2)(d) does not apply in such instance.

If a water right holder's use of water does not meet the definition of a water right for municipal water supply purposes for 5 or more years, then the water right would be valid only to the extent it had been beneficially used during that period, with any nonuse resulting in relinquishment of the right unless the non-use is excused by one of the other exemptions to relinquishment.

Under Ecology's interpretation of the Municipal Water Law, as explained in the Municipal Water Law Interpretive and Policy Statement, a water right held by any entity for Municipal Water Supply Purposes would relinquish in whole or in part if that entity did not beneficially use the water right in whole or in part for Municipal Water Supply Purposes, as that term is defined in RCW 90.03.015(4), for a period of five or more consecutive years at any time, whether before or after September 9, 2003.

INTERROGATORY NO. 9: Prior to September 9, 2003, did Ecology consider population figures or service connections provided in water right certificates or other water rights documents to be limits on the lawful use of a water right held for Municipal Water Supply Purposes?

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1 ANSWER:

2 Defendants object to Interrogatory No. 9 because the request is a purely legal question,  
3 and therefore not within the appropriate scope of discovery as prescribed by Civil Rules 26  
4 and 33. Furthermore, this interrogatory calls for the legal analysis of Defendants' counsel, and  
5 therefore requests information that is protected as attorney work product. Without waiving the  
6 foregoing objections, Defendants answer as follows:

7 Prior to 2000, internal Ecology documents demonstrate that there was uncertainty within  
8 the agency as to whether population figures or service connection numbers indicated in water  
9 right certificates or other water right documents were attributes that could limit the exercise of  
10 water rights.

11 In 2000, Ecology did consider a maximum number of service connections in a water right  
12 certificate or other water rights documents to be a limit on the use of water under a water right  
13 held for Municipal Water Supply Purposes. This is demonstrated by Ecology's action to modify  
14 a decision by the Yakima County Water Conservancy Board on an application for change of  
15 water right filed by the Yakima County Department of Public Works. Ecology modified the  
16 Conservancy Board's approval of the change application to include a provision stating that "[t]he  
17 County should be aware that this water right is limited to a maximum of 150 connections."  
18 Ecology's decision was appealed to the PCHB, in *Yakima County Public Works v. Department of  
19 Ecology*, PCHB No. 00-154. That case was dismissed based on a settlement without any  
20 resolution of the issue stated in the PCHB's Pre-Hearing Order as "[w]hether the number of  
21 connections authorized under a water right may be limited through a transfer or change decision  
22 based on the background and supporting documents for the water right, including the intent of  
23 the applicant as manifested by the original application?"

24 *Yakima County Public Works v. Department of Ecology* illustrated the uncertainty as to  
whether population or connection figures in water rights documents were limitations on water  
use under water rights, in addition to the specified maximum instantaneous and annual quantities  
authorized under the water rights. In contrast to Ecology, Health had not concluded that  
population and connection figures in water right documents were necessarily limitations upon  
Health's authority to approve maximum service connections under its water system planning  
authority. In the context of that case, there was an interagency dispute between Ecology and  
Health. The Solicitor General concluded that there was no clear answer on whether population  
and service connection figures in water right documents constituted water right limitations.  
After that time, *Yakima County Public Works v. Department of Ecology* was settled.

25 REQUEST FOR PRODUCTION NO. 12: Please produce any documents created by Ecology, or  
its attorneys, prior to September 9, 2003, which discuss population figures or service connections  
in the context of: (a) administrative proceedings involving a tentative determination of the extent  
and validity of a water right held for Municipal Water Supply Purposes; (b) administrative

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1 proceedings involving proposed transfers or changes to a water right held for Municipal Water  
2 Supply Purposes; (c) administrative proceedings involving relinquishment; and (d) Ecology's  
3 position or recommendation in a judicial water rights adjudication with respect to the extent or  
4 validity of a water right held for Municipal Water Supply Purposes.

4 RESPONSE:

5 Response will be provided in a future set of Defendants' responses to requests for  
6 production.

7 INTERROGATORY NO. 10: Please describe the process by which Health will ensure that  
8 approval of an amendment to a water system plan affecting a Municipal Water Supplier's (a)  
9 service area, (b) population served, or (c) number of approved service connections, will not  
10 affect existing water rights or instream flows.

11 ANSWER:

12 Defendants object to Interrogatory No. 10 as not reasonably calculated to lead to the  
13 discovery of admissible evidence and therefore outside the scope of permissible discovery  
14 prescribed by Civil Rules 26 and 33 because Plaintiffs have repeatedly asserted that their  
15 constitutional challenge to the Municipal Water Law is a facial one. Controlling case law  
16 indicates that no facts are necessary for a facial challenge and Defendants should therefore not be  
17 required to identify or produce any documents. Defendants further object because Interrogatory  
18 No. 10 presumes and impliedly requires a legal interpretation and conclusion, which is outside  
19 the scope of discovery under Civil Rules 26 and 33; the question posed in Interrogatory No. 10 is  
20 amenable to legal analysis and interpretation of the applicable laws by Plaintiffs' attorneys.  
21 Defendants dispute the implied legal interpretation and conclusion posed in Interrogatory No. 10  
22 regarding the statutory and regulatory purpose and intent for Health's approval of a Municipal  
23 Water Supplier's plan amendment. Without waiving the foregoing objections, Defendants  
24 answer as follows:

19 Health's review of a water system plan amendment under RCW 43.20 and WAC 246-290  
20 includes a water rights assessment, which typically includes verification by the purveyor and  
21 from Ecology regarding the system's water rights. Any approval of a plan amendment is  
22 presumptively based on Health's conclusion that the Municipal Water Supplier's plan conforms  
23 to all requirements of the law, including the elements of WAC 246-290-100, which includes  
24 consideration of current and future service being confined to the system's water right capacity  
25 (based on the maximum annual quantity and instantaneous quantity authorized under water rights

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held by the Municipal Water Supplier). This water rights and capacity analysis by Health is conducted under the internal policy direction provided in the August 27, 2004, Directive Memorandum Number B.02 and, as of May 1, 2007, includes the coordinated review outlined in the "Memorandum of Understanding" (MOU) between Health and Ecology. A water right assessment is conducted for small water system management programs under WAC 246-290-105. Further, for the water system plan amendment process, water systems with 1,000 or more connections must comply with the requirements of the State Environmental Policy Act.

INTERROGATORY NO. 11: Please describe the procedures by which interested third parties (other than the licensee Municipal Water Supplier) may administratively appeal a decision approving changes to a Municipal Water Supplier's water system plan.

ANSWER:

Defendants object to Interrogatory No. 11 because it is purely a legal question and it is not within the appropriate scope of discovery as prescribed by Civil Rules 26 and 33; it is amenable to legal analysis and interpretation of the applicable legal scheme by Plaintiffs' attorneys. Further, the term "interested third parties" is undefined and ambiguous. Without waiving the foregoing objections, Defendants answer as follows:

Under the definition of "water system plan" used by Plaintiffs, there appear to be three typical scenarios where an administrative decision could include a "change" to a Municipal Water Supplier's water system plan: 1) Health's approval of a water system plan amendment (e.g., RCW 43.20.250 and WAC 246-290-100) or small water system management program (WAC 246-290-105); 2) Health's approval of a project report (e.g., WAC 246-290-110); and 3) Health's final approval of a coordinated water system plan (RCW 70.116.070).

When Health approves a Municipal Water Supplier's water system plan, the document being approved can be an initial plan for a new Municipal Water Supplier or an amendment to an existing plan. Technically the plan amendment could be construed as an example of a "change." When Health approves a project report, the resulting project could be construed as a "change." When Health approves a coordinated water system plan under RCW 70.116.070, the resulting plan could be construed as a "change."

Each of the above-referenced decisions by Health that affects a "change" to the Municipal Water Supplier's water system plan represent the agency's administrative action under the respective statutory and regulatory scheme. For purposes of scenarios 1 and 2, Health's administrative action typically involves only the affected Municipal Water Supplier as a party to that action. For purposes of scenario 3, Health's administrative action typically involves only the affected purveyors within the coordinated water system plan. In addition, under RCW 70.116.070, there is provision for a public hearing regarding disputes over service areas and service area boundaries. Any decision by Health following such a hearing is potentially the

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1 subject for a petition for judicial review under the Administrative Procedure Act, RCW 34.05  
(APA), Part V.

2 Assuming that "interested third party" refers to a person who is not a Municipal Water  
3 Supplier or purveyor that is directly regulated by the above-referenced administrative decisions,  
4 the interested third party may be able to appeal the decision under several statutory contexts.  
5 A person may appeal the decision upon meeting the jurisdictional standing requirements for an  
6 application for an adjudicative proceeding under the APA, Part IV. A person may also seek  
7 intervention in such a proceeding under RCW 34.05.443. A person may seek an appeal by filing  
8 a petition for judicial review upon meeting the jurisdictional standing requirements under the  
9 APA, Part V. A person with standing as an "aggrieved party" may also appeal the superior  
10 court's ruling under RCW 34.05.526.

11 INTERROGATORY NO. 12: Describe with particularity all expenditures that Ecology, Health,  
12 or any other state agencies have made in implementing the Municipal Water Law and the  
13 source(s) of the funds used for these expenditures.

14 ANSWER:

15 Defendants object to Interrogatory No. 12 on the grounds that it is not reasonably  
16 calculated to lead to evidence needed by the Plaintiffs. It is not necessary for the State  
17 Defendants to describe expenditures by state agencies with particularity because State  
18 Defendants responded to Plaintiffs' Request for Admission No. 16 by admitting "that the State  
19 has used money from the general fund to pay for the implementation of HB 1338."

20 INTERROGATORY NO. 13: Identify all water right documents and related records for water  
21 rights that, prior to September 9, 2003, designated the place of use of a water right as the water  
22 right holder's service area or the general area that the water right holder provided water to, rather  
23 than by metes and bounds or another description of land area.

24 ANSWER:

25 Defendants object to Interrogatory No. 13 as overly broad and unduly burdensome.  
26 Defendants also object to Interrogatory No. 13 as not reasonably calculated to lead to the  
27 discovery of admissible evidence and therefore outside the scope of permissible discovery  
28 prescribed by Civil Rule 26 and 33 because Plaintiffs have repeatedly asserted that their  
29 constitutional challenge to the Municipal Water Law is a facial one. Controlling case law  
30 indicates that no facts are necessary for a facial challenge and Defendants should therefore not be  
31 required to identify or produce any documents. Without waiving the foregoing objections,  
32 Defendants answer as follows:

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1 Plaintiffs have limited the geographic scope of Interrogatory Nos. 1, 3, 4, and 5, above to  
2 Water Resource Inventory Areas (WRIA) 7, 8 (for Townships/Ranges: 22N/R05-E-R08E and  
3 21N/R06-R08E only), 9 (for Townships/Ranges: 22N/R05-E-R08E and 21N/R06-R08E only),  
4 15, 34 (ground water rights only), and 48. In these specific WRIs, Defendants have identified  
5 65 approved and proposed water system plans or small water system management programs.  
6 Relevant portions of these water system plans and small water system management programs  
7 have been produced in response to Requests for Production 4, 5, and 6, and each includes a water  
8 rights section identifying the water rights associated with each water system plan or small water  
9 system management program. In response to Request for Production No. 1 Defendants have also  
10 produced Department of Ecology WRTS spreadsheets identifying every water right certificate  
11 associated with each identified WRIA. Plaintiffs are invited to review the produced materials  
12 and identify those specific water right documents listed in each water system plan or small water  
13 system management program, or WRTS spreadsheet, they would like produced. Once Plaintiffs  
14 identify which water right documents they would like produced, Defendants will arrange to  
15 produce those documents for Plaintiffs, which will likely provide examples of water right  
16 certificates wherein the place of use of a water right is designated as the water right holder's  
17 service area or the general area that the water right holder provided water to, rather than by metes  
18 and bounds or another description of land area.

19 REQUEST FOR PRODUCTION NO. 13: For each water right document and related records  
20 identified in response to Interrogatory No. 13, please produce a copy of: (a) the original water  
21 right document and related records; (b) any amended water right document and related records;  
22 and (c) any other documents relating to the water right holder's purpose of use, place of use,  
23 system capacity, and actual beneficial use of water.

24 RESPONSE:

25 Defendants object to Request for Production No. 13 as overly broad and unduly  
26 burdensome. Defendants also object to Request for Production No. 13 as not reasonably  
27 calculated to lead to the discovery of admissible evidence and therefore outside the scope of  
28 permissible discovery prescribed by Civil Rule 26 and 33 because Plaintiffs have repeatedly  
29 asserted that their constitutional challenge to the Municipal Water Law is a facial one.  
30 Controlling case law indicates that no facts are necessary for a facial challenge and Defendants  
31 should therefore not be required to identify or produce any documents. Without waiving the  
32 foregoing objections, Defendants answer as follows:

33 See the response to Interrogatory No. 13 above. Defendants will produce documents  
34 responsive to Request for Production No. 13 when Plaintiffs identify which water right  
35 documents they want produced after reviewing relevant portions of the water system planning  
36 documents and WRTS spreadsheets that have been produced in response to Requests for

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1 Production Nos.1, 4, 5, and 6 above. Once Plaintiffs identify which water right documents they  
2 would like produced, Defendants will arrange to produce those documents for Plaintiffs, which  
3 will likely provide examples of water right certificates wherein the place of use of a water right  
4 is designated as the water right holder's service area or the general area that the water right  
5 holder provided water to, rather than by metes and bounds or another description of land area.

6 REQUEST FOR PRODUCTION NO. 14: Please provide any documents created by Ecology,  
7 Health, or its attorneys that address issues relating to populations served or service connections  
8 in the context of Municipal Water Suppliers or Municipal Water Supply Purposes.

9 RESPONSE:

10 Response will be provided in a future set of Defendants' responses to requests for  
11 production.

12 REQUEST FOR PRODUCTION NO. 15: Please provide any documents created by Ecology or  
13 its attorneys that provide guidance for issuing new water rights or certificates of change for  
14 Municipal Water Supply Purposes in closed basins or where streams do not meet instream flow  
15 requirements.

16 RESPONSE:

17 Response will be provided in a future set of Defendants' responses to requests for  
18 production.

19 REQUEST FOR PRODUCTION NO. 16: Please provide any documents created by Ecology or  
20 Health that address the coordination of water right evaluations in the context of the approval of  
21 new water system plans.

22 RESPONSE:

23 Response will be provided in a future set of Defendants' responses to requests for  
24 production.

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1 INTERROGATORY NO. 14: Identify each person you or your attorneys expect to testify at trial  
2 as a fact witness or expert witness. For each expert witness, state: (a) the subject matter on  
3 which the expert is expected to testify; (b) the substance of the facts and opinions to which the  
4 expert will testify; and (c) a summary of the grounds for each such opinion.

4 ANSWER:

5 Defendants object to Interrogatory No. 14 as not reasonably calculated to lead to the  
6 discovery of admissible evidence and therefore outside the scope of permissible discovery  
7 prescribed by Civil Rule 26 and 33 because Plaintiffs have repeatedly asserted their challenge to  
8 the Municipal Water Law is a facial one. Controlling case law indicates that no facts are  
9 necessary for a facial challenge and Defendants should therefore not be required to identify any  
10 witnesses for trial. Defendants further object to Interrogatory No. 14 because identification of  
11 fact witnesses expected to testify is protected attorney work product. Defendants further object  
12 to Interrogatory No. 14 because Plaintiffs have not identified any expert witnesses at this stage of  
13 the proceeding. Without waiving the foregoing objections, Defendants answer as follows:

10 Plaintiffs have not identified any expert witnesses in response to Defendants' discovery  
11 request, and Defendants will not be able to identify any potential expert witnesses until  
12 Plaintiffs' expert witnesses are known. Once Plaintiffs have identified expert witnesses,  
13 Defendants will supplement this discovery response.

12 INTERROGATORY NO. 15: Identify each person likely to have discoverable information that  
13 you may use to support your defenses in this litigation.

14 ANSWER:

15 See response to Interrogatory No. 17 below. In addition to the persons employed by the  
16 Department of Ecology and Department of Health, and the former Ecology employees, identified  
17 in Defendants' response to Interrogatory No. 17, the following persons are likely to have  
18 discoverable information that the State may use to support its defenses in this litigation:

- 18 1. James C. Waldo, former Special Assistant to the Governor for Water Policy.
- 19 2. Greg Grunenfelder, Department of Health.
- 20 3. Peggy Johnson, Department of Health.
- 21 4. Robert James, Department of Health.
- 22 5. Denise Lahmann, Department of Health.

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6. Megan Nicodemus, Department of Health.
7. Scott Torpie, Department of Health.
8. Janice Adair, former employee of Department of Health.
9. Michele Vazquez, former employee of Department of Health.
10. Jim Rioux, former employee of Department of Health.
11. Rich Hoey, former employee of Department of Health.
12. Rich Siffert, former employee of Department of Health.

Contact information for any of the persons listed above, and listed in the answer to Interrogatory No. 17 below, will be furnished upon Plaintiffs' request.

INTERROGATORY NO. 16: Identify all documents, data compilations, and tangible things that are in your possession, custody and control and that you may use to support your defenses in this litigation.

ANSWER:

Defendants object to Interrogatory No. 16 as overly broad and unduly burdensome. Defendants also object to Interrogatory No. 16 as not reasonably calculated to lead to the discovery of admissible evidence and therefore outside the scope of permissible discovery prescribed by Civil Rules 26 and 33 because Plaintiffs have repeatedly asserted their challenge to the Municipal Water Law is a facial one. Controlling case law indicates that no facts are necessary for a facial challenge and Defendants should therefore not be required to identify or produce any documents. Without waiving the foregoing objections, Defendants answer as follows:

Because Plaintiffs assert their challenge to the Municipal Water Law is a facial one, Defendants have not yet identified any documents that it may use to support their defenses in this litigation. Documents used by Defendants will in large part depend on what documents Plaintiffs produce in response to Defendants' comprehensive discovery requests.

REQUEST FOR PRODUCTION NO. 17: Please produce all documents identified in your response to Interrogatory No. 16.

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1 RESPONSE:

See answer to Interrogatory No. 16.

2 INTERROGATORY NO. 17: Identify all persons who assisted in your preparation of answers  
3 and responses to these interrogatories and requests for production or to your preparation of  
4 responses to Plaintiffs' First Requests for Admission.

5 RESPONSE:

6 The following employees of the Department of Ecology assisted in preparation of  
7 answers and responses to Plaintiffs' interrogatories, requests for production, and requests for  
8 admission: Joe Stohr, Ken Slattery, Doug Rushton, Brian Walsh, Dan Swenson, Tom Loranger,  
9 Thomas Tebb, Keith Stoffel, Phil Crane, Paul Fabiniak, Victoria Leuba, Dan Tolleson, Kevin  
10 Brown, Buck Smith, Doug Wood, Roma Call, Michele Curtis, Andy Dunn, Christy Distrude,  
11 Dorothy Glenn, Arlene Harris, Noel Philip, Melisa Snoeberger, Peggy Williams, Deb  
Hunemuller, Marie Peter, Jeff Marti, Melissa Downes, Dan Haller, Carol Mortensen, Scott  
Turner, Bob Barwin, Helen Decoto, Glenda Heironimus, Don Davidson, Dave Nazy, Carly  
Sullivan-Hopkins, Ann-Marie Sweeten, Melissa Winter, Barbara Anderson, Chris Anderson,  
Rebecca Inman, Bernadette Tavernor, and Roger Von Gohren.

12 The following employees of the Department of Health assisted in preparation of answers  
13 and responses to Plaintiffs' interrogatories, requests for production, and requests for admission:  
Denise Clifford, Deana Taylor, Leslie Gates, Kristin Bettridge, Sean Orr, Jerrod Davis, Lilia  
Lopez, Derek Pell, Bonnie Waybright, and Cindy Wulff.

14 The following former employees of the Department of Ecology assisted in preparation of  
15 answers and responses to Plaintiffs' interrogatories, requests for production, and requests for  
admission: Keith Phillips, Steve Hirschey, Doug McChesney, Mike Dexel, and Jill Van Hulle.

16 The following employees of James C. Waldo's law firm, Gordon, Thomas, Honeywell,  
17 Malanca, Peterson & Daheim, assisted in preparation of answers and responses to Plaintiffs'  
interrogatories, requests for production, and requests for admission: Micheline Sierer and Sincere  
Hankins.

18 The following employees of the Office of the Attorney General assisted in preparation of  
19 answers and responses to Plaintiffs' interrogatories, requests for production, and requests for  
admission: Alan Reichman, Mark Calkins, Stephen North, and Christine Winkelman.

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/s/ John Arum

JOHN ARUM (WSBA #19813)

BRIAN C. GRUBER (WSBA #32210)

Counsel for the Makah Indian Tribe  
in Case No. 06-2-40103-4 SEA

/s/ Harry L. Johnsen

HARRY L. JOHNSEN (WSBA #4955)

Counsel for Lummi Nation  
in Case No. 06-2-40103-4 SEA

/s/ Melody Allen

MELODY ALLEN (WSBA #35084)

Counsel for the Suquamish Tribe  
in Case No. 06-2-40103-4 SEA

/s/ Kevin Lyon

KEVIN LYON (WSBA #15076)

Counsel for the Squaxin Island Tribe  
in Case No. 06-2-40103-4 SEA

/s/ Mason Morisset

MASON MORISSET (WSBA #273)

Lead Counsel for the Tulalip Tribes  
in Case No. 06-2-40103-4 SEA

/s/ Kimberly Ordon

KIMBERLY ORDON (WSBA #16832)

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1 /s/ Michael Taylor

2 MICHAEL E. TAYLOR (WSBA #3664)

3 Co-counsel for the Tulalip Tribes  
4 in Case No. 06-2-40103-4 SEA

5 /s/ Karen Allston

6 KAREN ALLSTON (WSBA #25336)

7 JOSEPH CALDWELL (WSBA #22201)

8 Counsel for the Quinault Indian Nation  
9 in Case No. 06-2-40103-4 SEA

10 /s/ Katherine Krueger

11 KATHERINE KRUEGER (WSBA #25818)

12 Counsel for the Quileute Indian Tribe  
13 in Case No. 06-2-40103-4 SEA

14 /s/ Shaun Goho

15 PATTI GOLDMAN (WSBA #24426)

16 SHAUN GOHO (WSBA #37609)

17 Counsel for Burlingame Plaintiffs  
18 in Case No. 06-2-28667-7 SEA

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20  
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22  
23 **STATE DEFENDANTS' FIRST SET OF**  
24 **ANSWERS AND RESPONSES TO**  
**PLAINTIFFS' FIRST INTERROGATORIES**  
**AND REQUESTS FOR PRODUCTION**

ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
PO Box 40117  
Olympia, WA 98504-0117  
(360) 586-6760

1 VERIFICATION

STATE OF Washington )

2 COUNTY OF Thurston )

ss.

3 I, Ken Slattery, declare:

4 That I am an authorized representative of the State of Washington Department of  
5 Ecology and Jay Manning in the above-entitled lawsuit to whom these interrogatories and  
6 requests for production are addressed, and as such am authorized to make this verification; that I  
7 have read the foregoing responses to requests for production, know the contents thereof, and  
8 believe the same to be true.

9 I declare under penalty of perjury under the laws of the State of Washington that the  
10 foregoing is true and correct.

11 Executed on the 16 day of July, 2007, at Lacey, Washington.

12 Amber Sweten for Ken Slattery

13 Signature

14 Authorized Representative of

15 Defendants Washington Department of Ecology  
and Jay Manning

16 ATTORNEY'S RULE 26(G) CERTIFICATION

17 The undersigned attorney for Defendants Washington Department of Ecology and Jay  
18 Manning has read the foregoing answers and responses to these discovery requests, and certifies  
19 that they comply with CR 26(g).

20 Dated \_\_\_\_\_

21 \_\_\_\_\_  
22 Attorneys for Defendants Washington Department  
of Ecology and Jay Manning

23 **STATE DEFENDANTS' FIRST SET OF**  
24 **ANSWERS AND RESPONSES TO**  
**PLAINTIFFS' FIRST INTERROGATORIES**  
**AND REQUESTS FOR PRODUCTION**

ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
PO Box 40117  
Olympia, WA 98504-0117  
(360) 586-6760

1 VERIFICATION

STATE OF WASHINGTON )

2 COUNTY OF THURSTON ) ss.

3 I, Denise A Clifford, declare:

4 That I am an authorized representative of the State of Washington Department of Health  
5 and Mary Selecky in the above-entitled lawsuit to whom these interrogatories and requests for  
6 production are addressed, and as such am authorized to make this verification; that I have read  
7 the foregoing responses to requests for production, know the contents thereof, and believe the  
8 same to be true.

9 I declare under penalty of perjury under the laws of the State of Washington that the  
10 foregoing is true and correct.

11 Executed on the 5<sup>th</sup> day of July, 2007, at Tumwater, WA

12  
13 Denise A Clifford

14 Signature  
15 Authorized Representative of  
16 Defendants Washington Department of Health  
17 and Mary Selecky

16 ATTORNEY'S RULE 26(G) CERTIFICATION

17 The undersigned attorney for Defendants Washington Department of Health and Mary  
18 Selecky has read the foregoing answers and responses to these discovery requests, and certifies  
19 that they comply with CR 26(g).

20 Dated July 5, 2007

21 Mark H. Calkins, AAG  
22 Attorneys for Defendants Washington Department  
23 of Health and Mary Selecky  
24 MARK H. CALKINS  
25 WSBA # 18230

26 **STATE DEFENDANTS' FIRST SET OF  
ANSWERS AND RESPONSES TO  
PLAINTIFFS' FIRST INTERROGATORIES  
AND REQUESTS FOR PRODUCTION**

ATTORNEY GENERAL OF WASHINGTON  
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